

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

DERRICK D. NELSON, #1100973,

Petitioner,

v.

ACTION NO. 2:14cv89

HAROLD W. CLARKE,
Director of the Virginia
Department of Corrections,

Respondent.

FINAL ORDER

Petitioner, a Virginia inmate, has submitted a Petition for a Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254. The Petition alleges violation of federal rights pertaining to Petitioner's convictions on June 8, 2011, in the Circuit Court for the County of Brunswick for two counts of distribution of cocaine and one count of possession of a firearm while distributing cocaine. As a result of the convictions, Petitioner was sentenced to serve fifteen years in the Virginia penal system.

The petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed December 3, 2014, recommends that Respondent's Motion to Dismiss be GRANTED, and the petition for writ of habeas corpus be DENIED and DISMISSED as barred by the federal statute of limitations. The Court has received no objections to the Report and Recommendation and the time for filing objections has expired.


On page four, the Report and Recommendation indicates, "Nelson's federal petition was not executed until July 31, 2013." This date is incorrect. Nelson's federal petition was not executed until February 5, 2014. This was beyond the federal statute of limitations. Accordingly, the Court does hereby accept the remaining findings and recommendations set forth in the Report and Recommendation, and it is therefore ORDERED that Respondent's Motion to Dismiss (ECF No. 9) is GRANTED, and the petition for writ of habeas corpus (ECF No. 1) is DENIED and DISMISSED as barred by the federal statute of limitations. It is further ORDERED that judgment be entered in favor of Respondent.

Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty days from the date of entry of such judgment.

Petitioner has failed to demonstrate "a substantial showing of the denial of a constitutional right," therefore, the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. *See Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003).

The Clerk shall mail a copy of this Final Order to Petitioner and to counsel of record for Respondent.

Norfolk, Virginia
January 7, 2015



Raymond A. Jackson
United States District Judge